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No. 518

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

AIRCOOLED MOTORS, INC.,
Appellant,

v.

ARTHUR F. WILLIAMS,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITION FOR REHEARING OF ORDER DISMISSING APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

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The appellant prays that this Court grant rehearing of its order of February 28, 1955, dismissing the appeal for want of a substantial federal question, and that the Court issue an order noting probable jurisdiction.

REASONS FOR GRANTING REHEARING

If this case were of a different nature, this petition for a rehearing would not be filed, in view of the usual fate of such petitions. But, for reasons that appear below, this case is one that impels us to present this petition and sincerely and respectfully to ask this Court to take another look at the problem. (It will be recalled that the case involves the conflict between Federal and New York law relating to payment of time and one-half during an employee's absence for voting on Election Day.)

Initially the issue at bar may strike one as being insubstantial. But actually the issue lies athwart the whole constitutional philosophy behind the paramountcy clause, and involves the widest aspects of the administration and enforceability of the Fair Labor Standards Act and the Walsh-Healey Act. True in a sense it is a small case but, viewed in perspective, the issues loom large indeed. If this case were to go unreviewed, it is not too much to say that no employer and no lawyer will be able reasonably to gauge the extent of Federal and State power in this entire field of wage and hour regulation.

The Jurisdictional Statement failed to emphasize the vast importance of this appeal to thousands of employers and employees in many states. The case has had conspicuous publicity in the press, including newspapers of national circulation such as the *Wall Street Journal*. The case has been the subject of membership bulletins by employer organizations such as the Associated Industries of New York State, Inc., the National Association of Manufacturers, and the National Metal Trades Association. It has also aroused widespread interest in law schools and departments of political science, and among lawyers generally, as a result of analyses in the loose-leaf labor law services, most recently having been treated at unusual length in the well-known labor law service published by the Commerce Clearing House, Inc., of Chicago.

This case is not based upon peculiar or special facts unlikely to recur. The issue has no relation to the terms of a private contract. The factual situation here will recur, irrespective of contract, on every Election Day in every plant working overtime where the employees are subject either to the Fair Labor Standards Act or to the Walsh-Healey Act.

From its beginning in the Municipal Court of Syracuse this case has been a test suit, and so treated by each court which has heard it.* Although only 90 cents is involved in the test, hundreds of thousands of dollars are actually involved in industry as a whole, and especially in large establishments with many employees.

Moreover, the case raises another practical problem of intense interest and importance to the business community as well as to employees. Every employer, as things presently stand, is at a loss to know whether to obey Federal or State law (either existing or future statutes) regarding overtime matters, not only on Election Day but on any day. If New York law were now to be superior to Federal law on Election Day in the overtime-pay field, there would be no limit to the confusion and doubt as to whether Federal overtime laws would prevail on other days in respect of many other aspects of wage and hour regulation. The present case poses the issue in a clear-cut manner uncomplicated by special factors, so that it would seem that no better opportunity to settle these problems would ever be likely to come up.

The widespread interest in this appeal, from both a practical and a legal standpoint, is illustrated in the following excerpts from an article on this case, entitled "Overtime Pay for Time Off to Vote", published on March 10,

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*The New York Court of Appeals amended its remittitur, so as to state with particularity the constitutional questions involved, in response to the appellant's motion stating that an appeal was to be taken to the Supreme Court of the United States and that the remittitur should be amended in order to have the record in the Supreme Court "in as complete a form as possible upon the contemplated appeal thereto" and be in proper posture for the appeal "to the Supreme Court on the important constitutional issues involved." (See motion papers in Court of Appeals, filed as part of record herein in office of Clerk of the Supreme Court.)

1955 (*Labor Law Reporter*, Vol. 5, Commerce Clearing House, Inc.):

> "Must time-off-to-vote payments be added to wages when overtime is computed? Under New York law, yes. Under the Walsh-Healey and Fair Labor Standards Acts, no.
>
> "The first answer may be subject to change if and when the U. S. Supreme Court ever decides that requiring an employer to pay overtime for time taken off to vote is deprivation of property without due process of law in violation of the U. S. Constitution.* The Court has never specifically ruled on the issue and recently passed up an opportunity to do so by dismissing an appeal in *Aircooled Motors, Inc.* v. *Williams*, 27 Labor Cases ¶ 69,001, on February 28, 1955, 'for want of a substantial federal question.'
>
> "The issue involved is interesting and important, and, possibly, the want of substance in the *Williams* case was in the small sum of money involved rather than in the legal question. * * *
>
> "The amount involved was small—only 90 cents—but the principle involved was a big one. If the company paid one worker, it should pay all. * * *
>
> "It is not possible to conclude from these cases [*Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421; *Tide Water Associated Oil Co.* v. *Robison*, 344 U. S. 804; and *International Harvester Co.* v. *Minnesota*, 348 U. S. 853] that the issue is closed in the U. S. Supreme Court. The *Williams* case [the one at bar], as already pointed out, presents an entirely new issue."

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*Not only is the limit of the police power here involved, but explicitly in issue is the effect of the paramountcy clause in Article VI of the Federal Constitution.

On behalf of the appellant the undersigned counsel requests the Court that a rehearing be granted and that, upon rehearing, an order noting probable jurisdiction be entered.

Respectfully submitted,

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Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

HENRY S. FRASER
Counsel for Appellant